



South Dakota Hearing Handbook for Unrepresented Claimants

South Dakota Department of Labor
Division of Labor and Management
700 Governors Drive
Pierre, SD 57501
(605)773-3681

South Dakota Hearing Handbook For Unrepresented Claimants

If an employer, claim administrator, insurance company, or its attorneys (for convenience, they will be referred to as “your Employer”) and you cannot agree about what workers’ compensation benefits should be paid, either your Employer or you may petition the South Dakota Labor Department (“DOL”) for a hearing. This handbook is intended to answer your general questions about the hearing process. (Note: If you work for the federal government, we cannot help you; you will need to contact the Office of Workers’ Compensation Programs in the US Labor Department for more information.)

Small Claims

A Small Claims Hearing process is available which is less formal and much faster than the standard hearing process. You can petition for a Small Claims Hearing if:

1. Your claim is \$8,000 or less;
2. Your claim involves medical costs only (no disability claims); and
3. You have reached an agreement with your Employer and approved by DOL that establishes your general right to workers’ compensation benefits, or DOL has issued an order establishing that right.

A petition form for Small Claims is available as Appendix Sample 1.

We have tried to make this handbook as informative as possible; however, workers’ compensation proceedings are complex, much like civil trials. You should be represented by an attorney, preferably an attorney experienced in workers’ compensation matters. Your Employer will be represented by an attorney, and you will be at a critical disadvantage if you are not.

The state does not provide workers’ compensation coverage except for state government employees. Other government agencies are usually self-insured. Your Employer probably has a workers’ compensation insurance policy from a private insurance company. Private employers can be self-insured if DOL allows it. If your Employer is not insured or self-insured, it is uninsured. DOL has the power to hold hearings with insured or self-insured employers, but not uninsured employers. DOL can tell you if your Employer is insured or self-insured. If your Employer is uninsured, and refuses to pay benefits, you will have to sue in Circuit Court for benefits you feel you should receive.

Attorneys

You have the right to be represented by an attorney if you choose. The state does not provide an attorney for you. If your attorney is licensed in another state, our law has a procedure to allow the attorney to temporarily practice here with the consent of a South Dakota judge. If your attorney has questions, the rules can be found at SDCL 16-18-2.

You cannot be represented by someone who is not an attorney. You do not have to have an attorney to file a petition, but we strongly encourage you to have one.

If you hire an attorney, the maximum fee the attorney can collect is 25 % of your settlement, 30 % of the amount awarded at hearing, or 35 % of the benefits collected after an appeal. The percentage is based on both medical benefits and disability benefits that the employer would not have paid unless the attorney got involved. Added to the appropriate fee is the attorney's costs, which include things like postage, phone use, fees for hiring experts, copying costs, etc., and sales tax.

Mediation

If your Employer disputes your benefit claims, you may be able to negotiate a settlement. DOL can appoint a mediator who will facilitate settlement discussions if your Employer and you agree. This is a simple, effective, free alternative to the traditional hearing process. Most mediations are done by telephone, but the mediator can see the parties in person if they deem it necessary. The DOL mediator is someone with experience in workers' compensation law and procedure who will offer opinions about the strengths and weaknesses of the parties' legal positions. In a hearing, however, the administrative judge hearing the case may reach totally different conclusions about the merits of any claims. The parties are not bound to go along with the mediator's positions: they can accept, reject or modify what the mediator recommends. You may use Appendix Sample 2 to request a mediation. You can also mediate with non-DOL mediators; you only need the sample form if you are asking DOL to mediate. You or your Employer will have to pay a non-DOL mediator for their services.

The Hearing Process

The Petition for Hearing - You can file a Petition for Hearing with DOL. Filing a petition means you are suing your Employer. DOL does not charge a fee for filing a petition for hearing.

You may use Appendix Sample 3 to file a petition for hearing. You do not have to use DOL's form to petition for a hearing, but our rules require a petition to include the following information:

1. Your name,
2. The employer's name,
3. The insurer's name (if there is one),
4. The time and place of accident,
5. The manner in which the accident occurred,
6. The fact that the employer had actual knowledge of the injury within 3 business days or that written notice of injury was served upon the employer, and
7. The nature and extent of your disability.

When DOL receives your Petition for Hearing Form, it sends you and your Employer an ***acknowledgment letter***. It tells the parties you identified as your Employer that we received the petition. The letter instructs your Employer to file a response to both DOL and you in thirty (30) days of the date on the letter. You get a copy of that letter for your information; the form for that letter is included as Appendix Sample 4.

Within a few weeks after the Petition is filed, a DOL administrative judge is assigned to your case. Here are some rules to follow in communicating with the judge:

1. Never try to talk to the judge about your case without your Employer being able to participate.
2. Never write or email the judge about your case unless you sent a copy to your Employer at the same time you send it to the judge.
3. If you had contact with the judge about your case BEFORE the Petition was filed, the judge may not be able to hear your case, so tell DOL and your Employer about the contact.
4. If you send documents to the judge, always send copies to your Employer.
5. If you reach a partial or complete settlement with your Employer, DOL has to approve it for it to be binding.
6. Written communications should be able to be read without difficulty; handwritten notes may be difficult to read, so type (or have someone type for you) if possible.

The Answer - After you file your petition, your Employer is required to answer the petition, by admitting or denying each statement in the petition. If your Employer does not answer, let DOL know no answer has been received. In almost all cases, a telephone call or letter from us will get the required response, and will save a lot of time. If, however, your Employer continues to be unresponsive, you may ask DOL to take further action on your behalf.

When DOL receives the Answer, it sends you and your Employer a letter, Appendix Sample 5. DOL will not schedule a hearing or take other action unless you or your Employer asks it to do something. We would ask you and the Employer to exchange as much information, particularly medical reports, as you can without requiring formal legal requests for it.

Most of the time, the parties end up making formal “discovery” requests (see “Discovery” later in this handbook) for information to each other. You do not need to give us copies of any of those things until you want us to take some formal action related to them. The judge assigned to your case is identified so that you can have the judge removed automatically if you choose, but the time for that expires in twenty (20) days after the date of the letter acknowledging the Answer. You can have the judge removed after the twenty (20) days, but you must have legally sufficient “cause” for that.

In a few cases, your Employer files a Petition. DOL will then tell you to file an Answer to your Employer’s claims within thirty days. There is no form for the Answer, but

our rules require you to “state clearly and concisely an admission or denial as to each allegation contained in the petition for hearing.” If your Employer makes an assertion in its petition and you do not deny the assertion, the assertion may be considered admitted by you.

“Discovery” and Pre-hearing procedures

After DOL receives an Answer, you may want to know when your hearing will be scheduled. DOL will not schedule a hearing until the parties let us know they are ready, and the DOL judge assigned to the case is comfortable that the case is ready to be heard. Most cases require a period of “discovery” and pre-hearing procedure before the case is ready for hearing.

“Discovery” is what the parties do, before a hearing, to collect information about the case. The goal of discovery is to help the parties go to the hearing with as much knowledge of the facts connected with the claim as possible. To allow the parties to collect this information, discovery can go into many things that may not ever be revealed in the hearing. It is enough if the information is reasonably likely to help in finding hearing evidence. The discovery process includes depositions, interrogatories, demands for production of documents, requests for admissions, requests for physical or mental examinations, as well as any motions used to enforce discovery rights.

A **deposition** is testimony taken under oath, but not during the hearing. The deposition may be by written questions, but is most often face to face. The judge is not there. If you are deposed, you will be asked questions about the claim or that might lead to the discovery of evidence about the claim. You can object to the questions, but will have to have a legally sufficient reason not to answer.

You should be careful and accurate when answering questions at a deposition. You are under oath. If you answer a question, you will be assumed to understand it; if you do not understand, or do not know the answer, say so. A private court reporter will be there to prepare a written record of whatever is said. This written record is called a “transcript.” (Someone has to pay the reporter if the transcript is going to be reduced to written transcript. DOL will not do that.)

Why do people take depositions? Sometimes witnesses will not be available for the hearing, and their testimony needs to be preserved. More commonly, people are gathering information and getting the witness's version of events. They want to see for themselves how credible the witness appears to be, because a judge will be deciding that later. They also want to eliminate possible versions of the story that are not in the witness's version now, but which might appear later. Witnesses can be “impeached” by their deposition testimony; for example, if they were to admit in a deposition that they did not speak to their boss about their injury, then testified at hearing that they did tell the boss, the deposition testimony could be offered at the hearing to prove they were lying.

When you are notified that you will be deposed, a **subpoena** or **subpoena duces tecum** often comes with it. A **subpoena** is an order, issued by DOL or an attorney invoking DOL's powers, telling you to be in a place at a particular time and day. A **subpoena duces tecum** orders you to turn over certain documents or to bring them to a designated place at a particular time and day. If you cannot appear when scheduled, or cannot produce the subpoenaed documents, you should inform the other party. A subpoena or subpoena duces tecum are usually delivered to you (called being "**served**") by a law enforcement officer, though they can be served by anyone. In some cases, you may get an **Admission of Service** with such documents instead of having them served on you; it saves money and time to do that, but you do not have to sign and return the Admission of Service unless you want to.

Interrogatories are questionnaires, and you are swearing under oath to the answers. Each question must be answered or objected to; if you do not know the answer, you are required to make reasonable efforts to find it. You should provide all answers no later than thirty (30) days after the interrogatories are received; if that cannot be done, you should tell the party who sent them, and ask for more time. If you have the answer later, or your answer changes with time, you must send an updated answer to your Employer. Appendix Sample 6 is a sample from an interrogatory.

If records, reports, email messages, or the like are needed, **demands for production of documents** are often made. Like interrogatories, you must comply with or object to the production demand. A business can assert that a production demand is too burdensome, and in some cases may comply by saying where its records are so they can be copied, inspected or summarized. Appendix Sample 7 is a sample from a production demand.

A **request for admission** is a request to a party that they admit certain facts. One party sends the other a request for admission so that basic issues the parties agree upon can be resolved and not have to be proven if the parties go to hearing. The response is to admit, deny, or object to the request. If part of the requested admission is true, admit to that. Appendix Sample 8 is a sample of an admission request.

You may be asked to attend a **mental or physical examination**. The rules about the examination depend on whether the examination was ordered by a DOL judge or not. If you are not ordered to attend, the examination must be "reasonably convenient" for you; DOL has interpreted that to mean that the trip must not worsen your condition, or be under conditions which make it impracticable. Your Employer must pay the cost of going to the examination, including the doctor's fees, meals, lodging, and transportation. If the trip is reasonably convenient, and you do not go, you will lose any disability benefits you would have received until you do attend an examination.

If a party asks DOL to order you to attend an examination, the order must set out the time, place, manner, conditions, and scope of the examination, and the person or persons by whom it is to be made. You have the right to object to any of these things. Once DOL orders you to attend, however, you must go.

Medical records are a critical part of every workers' compensation case. However, a judge cannot consider them unless you do one or more of the following things:

1. Show the records to your Employer's attorney, and have the attorney agree (they sometimes say "**stipulate**") that the judge can consider the records;
2. Bring the medical provider to the hearing, and have them testify that the records are theirs;
3. Take the provider's deposition, and have them testify that the records are theirs; or
4. Prepare an **affidavit**, Appendix Sample 9, in which the provider says, under oath and signed in the presence of a notary, that the records are theirs. The affidavit needs to include the provider's credentials (sometimes called the "curriculum vitae.") Your Employer has to be officially notified at least thirty (30) days before the hearing that such an affidavit will be shown to the judge, and mailing a **notice of affidavit**, Appendix Sample 10, will do that.

If discovery laws are broken, DOL may intervene. For example, a party does not answer an interrogatory question, objects to it without proper grounds, or gives an evasive or incomplete answer. If the problem cannot be worked out between the parties, the affected party may file a **Motion to Compel** with DOL. DOL can be asked to force a party to comply with discovery, and to reimburse the moving party for the costs it incurred (attorney's fees, for example) in making the motion. If DOL grants the Motion to Compel, and that order is not followed, DOL can take further action to enforce the order.

Scheduling Orders set out a timeline for pre-hearing matters to be done. Your Employer, DOL or you can start the process for such orders. DOL will send out a **Proposed Scheduling Order**, Appendix Sample 11, asking your Employer and you to say what deadline dates will work for both of you. Appendix Sample 12 is an example of a **Scheduling Order**; you should look at it to get an idea of the deadlines such orders set. If the dates set in the order will not work for you, contact the judge issuing the order to ask that they be changed.

An important date in the Scheduling Order is the one for the **Prehearing Conference**. At that conference, the DOL judge, your Employer and you will be on the telephone to discuss the hearing. You should be prepared to identify any witnesses you plan to have at the hearing, to say what issues or claims you will have to present, and to tell the judge what days and times you have available to hold the hearing. A **Prehearing Order**, Appendix Sample 13, goes out after the conference, with a deadline date at the end for making changes. You will also receive a **Notice of Hearing**, Appendix Sample 14, which will remind you where and when the hearing will be held.

The Hearing

The hearing is usually held in the community where the injury occurred. DOL does not have hearing rooms as such, but will hold the hearing in as convenient a location as possible. Hearings have been held in libraries, bank conference rooms, school offices, and public meeting halls. The hearings are open to the public, but are rarely attended by those without a direct interest in them. A court reporter hired by DOL will record the testimony. As in a deposition, no written transcript will be prepared unless the parties pay for it. DOL does not pay for this.

The hearing rules are set by state administrative procedures and evidence law. The DOL judge is always a South Dakota-licensed attorney. The hearings are semi-formal, and may last anywhere from an hour to several days. Your Employer and you get to present your sides of the case and to question the witnesses that testify. All testimony is taken under oath.

Your Employer and you can testify, call witnesses and present other relevant evidence. After each witness testifies, the other side has the chance to ask questions. After the first side has finished presenting all its evidence, the other side has the same opportunity to present its case through testimony and other evidence. The judge may also ask witnesses questions.

Both sides must ask that documents be made part of the record. The other side will be given a chance to object to them. The judge decides whether the law allows you to include these documents in the record. At a minimum, documents have to be “authentic” and “relevant”; if the document is a letter from someone, for example, you have to be able to prove it really is their letter, and the contents of the letter will help prove the facts in your case. As with medical records, in some cases your Employer may be willing to agree that documents are authentic and/or relevant without more proof. You should talk to your Employer about this before the hearing.

After both sides have had the chance to present all the information they wish, you will have the chance to give concluding remarks which summarize the facts and tell the judge what legal action you want them to take. Many times **briefs** are written instead of making oral comments; these briefs typically are done within a few weeks after the hearing.

After the judge receives all the legal arguments the parties want to make, the judge will send out a **Decision** on the case. The Decision is to be issued in thirty days or less after any legal arguments have been made. It is not a final decision at this point. The judge will instruct the parties to prepare **Findings of Fact, Conclusions of Law, and an Order** which, when signed by the judge, will make the Decision final. Appendix Sample 15 is an example of Findings of Fact, Conclusions of Law, and an Order.

If you do not agree with the judge’s Decision and Findings, Conclusions and Order, you have the right to petition the Labor Secretary to review them. The review must be

requested no later than ten days after the judge's ruling becomes final. The Secretary may deny the petition, direct that an additional hearing be held, or order that additional evidence be received.

If you do not agree with what the Secretary finds on review or wish to bypass review altogether, you have the right to appeal to Circuit Court, then to the state Supreme Court. It is beyond the scope of this handbook to explain the procedure for appealing a case; you are encouraged to talk to an attorney, or review the laws about administrative appeals found in chapter 1-26 of our state's codified laws.

Appendix

Sample 1

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

Claimant,

HF No.

v.

Employer,

**SMALL CLAIMS PETITION
FOR HEARING**

And

Insurer.

_____. Claimant, makes claim against
_____. Employer, and
_____. Insurer, and respectfully alleges,
to Claimant's best knowledge, information and belief:

1.

That I, Claimant, suffered an injury, disease or hearing loss which arose out of and in the course of my employment with Employer.

2.

That Employer was self-insured, or insured by Insurer, at the time of my injury, disease or hearing loss. When I use the term "Employer" for the remainder of this petition, it will include the Insurer, if any, by reference.

3.

That the South Dakota Department of Labor has previously ordered Employer to be responsible for my injury, disease or hearing loss, or has approved an agreement between Employer and me making Employer responsible.

4.

That Employer has not paid the following medical costs (attach additional pages if necessary):

5.

That the above costs are reasonable, medically necessary, and connected with my injury.

6.

That the above costs do not exceed \$8,000.

7.

WHEREFORE, the Claimant petitions that the Division of Labor and Management hold a hearing and award the medical expenses to which the Claimant is entitled under South Dakota workers' compensation law.

Dated this ____ day of _____, 20 ____.

Claimant's name, address, and phone number (* = required):

Name*

Address (street, apt/box#, city, state)*

Phone #*

Cell #

Other (email, fax)

Sample 2

MEDIATION REQUEST FORM

Date: _____

By completing this form and sending it to the Department, you are requesting a mediation. You will be contacted by phone to schedule the mediation within two to three weeks.

Name: _____

Address: _____

Social Security No: _____

Date of Injury: _____

Daytime Phone No: _____

(where you can be reached to schedule the mediation)

Please list all of the issues you would like to discuss during the mediation. In addition, attach any documents you have to support your position, including any medical records.

[illegible]

Please send this form to:

South Dakota Department of Labor
Division of Labor and Management
700 Governors Dr.
Pierre, SD 57501

Phone: (605) 773-3681

Fax: (605) 773-4211

Sample 3

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

1) _____

Claimant,

PETITION FOR HEARING

vs.

2) _____

Employer,

and

3) _____

Insurer.

COMES NOW, 4) _____,

Claimant in the above matter, respectfully shows and alleges as follows:

I.

That on or about the 5) _____ day of 6) _____, 7) _____,
and for some time prior thereto, Claimant was employed by 8) _____
_____ in 9) _____, South Dakota.

II.

That the Employer was insured on the date of injury listed below under the
Workers' Compensation laws of the State of South Dakota with the Insurer above named.

III.

That on or about the 10) _____ day of 11) _____, 12) _____
while Claimant was employed by 13) _____,
Claimant suffered an injury to 14) _____, all of which arose out of
and in the course of his or her employment with said Employer, in the manner following:

15) _____

IV.

That thereafter and within less than three (3) days after the injury the Employer had actual knowledge of Claimant's injury.

V.

That the injury described above has caused Claimant to suffer the following disability or disabilities:

16) _____

WHEREFORE, Claimant requests that a hearing be had on the claim and that upon such hearing an award of workers' compensation benefits be made for any and all benefits to which Claimant is entitled under the South Dakota Workers' Compensation Act.

17) Dated this day of _____,

18) Information from person submitting this Petition for Hearing:

Name: _____

Mailing Address: _____

Phone Number: _____

Social Security Number: _____

Sample 4



South Dakota Department of Labor
Division of Labor and Management
700 Governors Drive
Pierre, South Dakota 57501-2291
(605) 773-3681
Fax: (605) 773-4211
URL: www.sdjobs.org

Wage & Hour Division (605) 773-3682
Human Rights Division (605) 773-4493
Email: humanrights@state.sd.us

Date

Employer Address

Insurer Address

RE: HF No. 1, 2005/06 – Claimant vs. Employer name and Insurer name (example)

Greetings:

This letter acknowledges receipt of a Petition for Hearing filed by the claimant in the above-referenced matter. You are hereby served with a copy of the Petition for Hearing.

According to ARSD 47:03:01:02.01, any adverse party has 30 days after the date of the mailing of this notice to file a response to the Petition for Hearing. The response shall be in writing and need not follow any specific form. The response shall state clearly and concisely an admission or denial as to each allegation contained in the Petition for Hearing.

In addition, this file has been assigned HF No. 1, 2005/06 (example). **The Department of Labor will no longer accept correspondence without the assigned hearing file number. Any correspondence without the hearing file number will not be accepted for filing.**

Sincerely,

James E. Marsh
Director

JEM/jjm

Enclosure

cc: Claimant's Name

Sample 5



South Dakota Department of Labor
Division of Labor and Management
700 Governors Drive
Pierre, South Dakota 57501-2291
(605) 773-3681
Fax: (605) 773-4211
URL: www.sdjobs.org

Wage & Hour Division (605) 773-3682
Human Rights Division (605) 773-4493
Email: humanrights@state.sd.us

Date

Claimant Address

RE: HF No. 1, 2005/06 – Claimant vs. Employer and Insurer (example)

Dear Claimant:

This letter acknowledges receipt of Employer/Insurer's Answer in the above-referenced matter.

The parties are directed to exchange as much relevant information as possible informally and promptly, without the necessity of discovery requests. See SDCL 62-4-44 and 62-4-45.

The Department may enter a Scheduling Order, pursuant to ARSD 47:03:01:12, at the written request of any party.

If the parties are prepared to have this matter heard before the entry of a Scheduling Order, please contact the Department, in writing.

Filing of discovery matters with this office is no longer necessary. Such filings will be discussed at the prehearing conference. It will be necessary for the parties to notify the Department of affidavits provided and depositions that have been taken.

Finally, please take notice that the Department has assigned the above-referenced workers' compensation hearing file to Administrative Law Judge, . This notice is given for purposes of and pursuant to SDCL 62-7-12.2.

Sincerely,

James E. Marsh
Director

JEM/smr
cc: Employer/Insurer's Counsel

Sample 6

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

Injured Party,

Claimant,

v.

Widget Maker,

HF # 1, 2006/07

Employer,

Employer/Insurer's Interrogatories

and

Comp Carrier,

Insurer.

TO: John Layman, Pierre, South Dakota, 1

PLEASE TAKE NOTICE that pursuant to SDCL 15-6-33, Employer/Insurer hereby requests that Claimant fully answer the following interrogatories and requests for production under oath within thirty (30) days after service .

PLEASE TAKE FURTHER NOTICE that if you fail to make or cooperate in providing answers to these interrogatories and production requests, the Employer/Insurer will call upon the Department of Labor to impose sanctions as provided in SDCL 15-6-37.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each person who has assisted in preparing your answers to these interrogatories.

Dated at Pierre, South Dakota, this 1st day of January, 2006.

John Barrister,
Attorney for the Employer/Insurer

Sample 7

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

Injured Party,

Claimant,

v.

Widget Maker,

HF # 1, 2006/07

Employer,

**Employer/Insurer's Demand for
Production of Documents**

and

Comp Carrier,

Insurer.

TO: John Layman, Pierre, South Dakota,

PLEASE TAKE NOTICE that pursuant to SDCL 15-6-34, Employer/Insurer demands production of documents under oath within thirty (30) days after service hereof. PLEASE TAKE FURTHER NOTICE that if you fail to cooperate in responding to these production demands, the Employer/Insurer will call upon the Department of Labor to impose sanctions as provided in SDCL 15-6-37. Any document responsive to this request that is not produced for any reason shall be identified by date, subject matter, author, recipient, and the basis upon which the document is withheld.

PRODUCTION DEMAND NO. 1: All medical records in Claimant's possession which are relevant to his claim.

Dated at Pierre, South Dakota, this 1st day of January, 2006.

John Barrister,
Attorney for the Employer/Insurer

Sample 8

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

Injured Party,

Claimant,

v.

Widget Maker,

HF # 1, 2006/07

Employer,

**Employer/Insurer's Request for
Admissions**

and

Comp Carrier,

Insurer.

TO: John Layman, Pierre, South Dakota,

You are requested, within thirty (30) days after service of this request, to admit (for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the hearing) the truth of the following facts:

1. Your name is John A. Layman.

Dated at Pierre, South Dakota, this 1st day of January, 2006.

John Barrister,
Attorney for the Employer/Insurer

Sample 9

**SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT**

Injured Party,

Claimant,

Widget Maker,

HF No. 1, 2006/07

Employer,

AFFIDAVIT

and

Comp Carrier,

Insurer.

SS.

I, _____, being first duly sworn, on oath state: that I am currently a practitioner of the healing arts, licensed to practice in the state of South Dakota; that I examined _____; that I have reviewed the reports attached as Exhibit A to this Affidavit; that the reports constitute all of my reports, and that if called upon to testify I would testify to the same facts, observations, conclusions, opinions and other matters in these reports with reasonable medical probability. My curriculum vitae is attached as Exhibit B.

(signature of affiant)

Subscribed and sworn to before me this _____ day of _____, 20 _____.

(Notary Seal)

Notary Public

Sample 10

**SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT**

Injured Party,

Claimant,

Widget Maker,

HF No. 1, 2006/07

Employer,

**NOTICE OF SDCL 19-16-8.2
AFFIDAVIT**

and

Comp Carrier,

Insurer.

TO: _____

PLEASE TAKE NOTICE that _____, Claimant,

intends to offer the records and Affidavit of _____

at the hearing in this matter. This notice is given to comply with SDCL § 19-16-8.2.

(date)

(signature of party giving notice)

CERTIFICATE OF SERVICE

I certify that on _____, 20____, at _____, South Dakota, a true and correct copy of this Notice of SDCL § 19-16-8.2 Affidavit was mailed by first-class mail to each of the parties listed below:

Signature

Sample 11

Sample 11

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

Injured Party,

HF No. 1, 2006/07

Claimant,

PROPOSED SCHEDULING ORDER

vs.

Widget Maker,

Employer,

and

Comp Carrier,

Insurer.

Pursuant to ARSD 47:03:01:12, it is hereby

ORDERED that the respective parties shall file with this office, within ten (10) days of the date of this Order a response with respect to the following:

1. What are the relevant issues and can any of these issues be bifurcated?
2. Are there any matters this party considers pertinent for consideration in the scheduling of this case?
3. How much time should be allotted for the hearing?
4. What facts are undisputed and what records' foundation can be stipulated?
5. What prehearing deadlines should be set?
 - (a) To add additional parties or amend pleadings?
 - (b) To disclose and identify experts and exchange expert reports?
 - (c) To file discovery requests?

To complete discovery?

To file prehearing motions?

(f) To conduct the prehearing conference?

The Department shall enter a Scheduling Order following the submission of the parties' responses. Noncompliance with this Order shall result in the entry of a Scheduling Order without benefit of a response. The Scheduling Order may not be modified except by order of the Department upon a showing of good cause.

Dated this 29th day of December, 2006.

SOUTH DAKOTA DEPARTMENT OF LABOR

Administrative Law Judge

Sample 12

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

Injured Party,

HF NO. 1, 2006/07

Claimant,

v.

**SCHEDULING ORDER AND
NOTICE OF TELEPHONIC
PREHEARING CONFERENCE**

Widget Maker,

Employer,

And

Comp Carrier,

Insurer.

Pursuant to ARSD 47:03:01:12, it is hereby ORDERED that the following schedule shall be followed, unless good cause is shown:

- 1) Parties shall be added or pleadings amended by February 21, 2007;
- 2) Claimant shall disclose and identify expert(s), together with the expert's report by April 16, 2007;
- 3) Employer/Self-Insurer shall disclose and identify its expert(s), together with the expert's report by May 16, 2007;
- 4) File discovery requests by May 16, 2007;
- 5) Discovery shall be complete by June 18, 2007; and
- 6) Prehearing motions shall be filed by July 18, 2007.

The telephonic prehearing conference in this proceeding is scheduled for August 17, 2007, at 10:00 a.m. (CST). Counsel shall be fully prepared at the time of this conference to:

- a) Identify all outstanding issues;

- b) Present arguments and authorities in regard to all motions or amendments to pleadings, which must be filed with the Department prior to conference;
- c) Identify all potential witnesses;
- d) Identify all affidavits and depositions intended to be offered at hearing or objections thereto;
- e) Stipulate to all factual matters not in dispute;
- f) Stipulate to the admission or foundation of exhibits where appropriate;
- g) Present any requests for official notice;
- h) Set a date and time for hearing of this matter;
- i) Present any other matters which will aid in the expeditious conduct of the hearing.

IT IS FURTHER ORDERED that each counsel participating in the prehearing conference have a thorough knowledge and be prepared to discuss the case. Counsel must have full authority from the party represented and any law firm with which counsel is associated to take such action as may be necessary to comply with this order.

An order shall be entered subsequent to the conference reciting any action taken, rulings made, and agreements reached by the parties. The order will control the subsequent course of the hearing unless modified to prevent manifest injustice.

Dated this 31st day of January, 2007.

SOUTH DAKOTA DEPARTMENT OF LABOR

Director

Sample 13

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

Injured Party,

HF No. 1, 2006/07

Claimant,

PREHEARING ORDER

vs.

Widget Maker,

Employer,

and

Comp Carrier,

Insurer.

The above-entitled matter came on for telephonic prehearing conference before James E. Marsh, Director, Division of Labor and Management, on August 17, 2007 at 10:00 a.m. Claimant was represented by Jane Legal, and Employer/Insurer by John Barrister. Pursuant to the stipulations of the parties and/or the rulings of the Director, it is hereby ORDERED:

1. That the issues to be presented at hearing are: Whether Claimant's work was a major contributing cause for her present condition.
2. That the live witnesses to be called by Claimant are: Claimant.
3. That the live witnesses to be called by Employer/Insurer are: Walter Widget
4. That the following affidavit(s)/deposition(s) will be offered into evidence: Dr. Fix
5. That the parties have stipulated to the following facts: Claimant worked for Employer at the time of the claimed injury. Insurer was providing coverage at the time.
6. That the parties have stipulated to foundation of the following exhibits: Medical records.

That the parties shall be bound by this Order unless written objection is made to the Department and received by August 3, 2007. No changes will be allowed after that date except in the case of unforeseen exigencies. For purposes of SDCL 62-7-12.2, the above-referenced matter has been assigned to the undersigned Administrative Law Judge.

Dated this 18th day of August, 2007.

SOUTH DAKOTA DEPARTMENT OF LABOR

James E. Marsh
Director

Sample 14

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

Injured Party,

HF No. 1, 2006/07

Claimant,

NOTICE OF HEARING

vs.

Widget Maker,

Employer,

and

Comp Carrier,

Insurer.

IT IS HEREBY ORDERED that the above-captioned matter will be brought on for hearing as follows:

DATE: Date of Hearing

TIME: Time of Hearing, or as soon thereafter as counsel may be heard.

PLACE: Place of Hearing

If anyone participating in this hearing requires accommodation due to a disability, contact the Department of Labor at least two weeks in advance of the scheduled hearing and suitable arrangements will be made.

DONE at Pierre, Hughes County, South Dakota, this day of , 2006.

SOUTH DAKOTA DEPARTMENT OF LABOR

Administrative Law Judge

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

COPYING OF EXHIBITS

Due to the workload of the Division of Labor and Management, we are unable to copy exhibits following hearings. Please make copies of your exhibits for opposing counsel and for your use during hearing. If an exhibit is offered and there are no copies available, it will be your responsibility to copy the exhibit and make sure the original is provided to this Department.

Sample 15

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

Injured Party,

Claimant,

HF No. 1, 2006/07

vs.

Widget Maker,

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Employer,

and

Comp Carrier,

Insurer.

This matter came before the Department of Labor, Division of Labor and Management, by way of a workers' compensation hearing held September 25, 2007. Claimant, Injured Party, and Widget Maker and Comp Carrier, Employer/Insurer, were present at the hearing and represented by counsel. The Department issued a Decision dated October 25, 2007. The Department now issues Findings of Fact, Conclusions of Law, and an Order which incorporates that Decision by reference.

FINDINGS OF FACT

- 1 Claimant was injured on March 1, 2006, when he strained his back.
2. Claimant's doctor established that Claimant's work was a major contributing cause for his strained back.

CONCLUSIONS OF LAW

- 1 The Department has jurisdiction over the parties and issues involved in this action.

2. Claimant suffered a work-related injury, for which Employer/Insurer is legally responsible.

Dated this 15th day of November, 2007.

Director

ORDER

In the matter of Injured Party, Claimant, vs. Widget Maker, Employer, and Comp Carrier, Insurer, and The Division of Labor and Management, South Dakota Department of Labor, having heard this matter on September 25, 2007, pursuant to notice, and the Division having entered its Decision, Supplemental Decision, Findings of Fact, and Conclusions of Law relative to the matter, it is ORDERED that:

1. Comp Carrier pay any and all benefits stemming from Injured Party's back strain on March 1, 2006.

Dated this 15th day of November, 2007.

Director